

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. J.D.'s entire estate at her death was \$2,618.05 in a checking account. J.D. had no relatives or other persons

willing to administer her estate so the business manager of the nursing home applied to the probate court which granted her appointment as administrator.

3. The estate is currently before the probate court where the nursing home and the Medicaid program are claimants of the same class. The result is that the estate will be divided in proportion to the amount of the claims. DCF has a much larger claim (\$83,839.86) for Medicaid recovery against the estate than the nursing home has for the unpaid patient share. The amount the nursing facility will recover under this system will be negligible.

4. The estate administrator/nursing home business manager argues that the Medicaid division should forego its claim because (1) Medicaid does not pursue estates of \$2,000 or less and this estate is close to that amount; (2) the nursing home as a small organization has proportionally more to lose than the state Medicaid division; and (3) there would be no estate to collect against if the nursing home administrator had not opened the estate.

5. In a letter dated August 1, 2005, DCF's Office of Vermont Health Access, Estate Recovery Unit denied the petitioner estate's request citing rules of the probate court which do not allow preferences among members of the same

class and advised the estate that it had a right to an appeal to the Human Services Board.

6. At the hearing, the estate asked for the state in its discretion to withdraw its Medicaid claim from the court. The request was reviewed by the state and a decision was made that it would not grant the request because federal and state law required it to seek recovery unless there is less than \$2,000 in the estate or unless recovery would cause "undue hardship" to the decedent's family members. DCF maintains that the "undue hardship" provision does not extend to health care providers. Since it had no authority to withdraw its claim, DCF intended to pursue recovery and to leave the distribution decisions to the probate court.

ORDER

The appeal is dismissed for lack of jurisdiction.

REASONS

Although DCF argues this case on the merits, the Board has no jurisdiction over this claim under its own statute which restricts appeals to the Board to "an applicant for or a recipient of assistance, benefits or social services". 3 V.S.A. § 3091(a). DCF's own Medicaid regulations reiterate that restricted jurisdiction: "Any Medicaid applicant or

recipient has a right to appeal any decision of the Department about his or her Medicaid eligibility or amount of coverage, and to request a fair hearing before the Human Services Board" M142.¹ DCF has carved out a special exception to this rule by defining the administrator of an estate as a person who can "act as the authorized representative" of an applicant only in the case of "a person who dies before he can apply for retroactive Medicaid." M104. As this is not a claim for retroactive Medicaid but for waiver of a recovery action, the administrator cannot represent the decedent recipient in an appeal before the Board and her case must be dismissed.²

If any remedy, equitable or otherwise, exists for the administrator it is before the probate court handling this estate. The petitioner should be aware that DCF's own regulations do require that it "shall seek adjustment or recovery from the estate of an individual" over fifty-five who has no surviving spouse from "assets which are included in the estate when it is filed in the probate court." M159.

¹ Certain exceptions apply to this rule which further restrict the rights of certain applicants and recipients to appeal. See M142.

² Although the Recovery Unit advised in its denial notice that the administrator could appeal to the Humans Services Board, that advice does not confer jurisdiction upon the Board. DCF is required by regulation and due process concerns to advise all persons with adverse decisions of a right to appeal to the Board. It is the Board's task to decide whether it can hear those appeals under the statue and regulations.

The regulations give DCF the authority to waive recovery only in very specific instances of "undue hardship" to family members of the decedent defined as "spouse, parents, children or siblings." M159. It is only upon the request of those listed persons that DCF has any authority to waive its recovery efforts. Estates and creditor health providers are not included in this list of persons who can claim "undue hardship." As sympathetic as the nursing home's case is, if the Board had taken jurisdiction over this matter, it would have been forced to uphold DCF's decision not to waive recovery as consistent with its regulations.

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